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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,284	03/10/2004	David Kirchhoff	03968-P0001C	2939

24126 7590 02/25/2008
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EXAMINER

RIVIERE, HEIDI M

ART UNIT	PAPER NUMBER
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3629

MAIL DATE	DELIVERY MODE
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02/25/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/797,284	Applicant(s) KIRCHHOFF ET AL.	
	Examiner HEIDI RIVIERE	Art Unit 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-59 and 69-80 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-59 and 69-80 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION**RESPONSE TO ARGUMENTS**

1. **With respect to Claims 16, 17, 27, 39, 43 and 73:** Claims 16, 17, 27, 39, 43 and 73 were objected to because Examiner was unsure whether Applicant was referring to the following term in the plural hence “**indicia**” or the singular hence “**indicium**”. The claims have been amended to show delete “indicia” and replace with “indicium”. Hence, the objection is withdrawn.
2. **With respect to Claims 55 and 65:** Claims 55 and 65 were objected to because the use of the term “**selectably**” is unclear and not a recognized word. Claim 55 has been amended to remove this term. Claim 65 has been cancelled. Hence, the objection is withdrawn.
3. Applicant’s arguments with respect to the rejection(s) of **claim(s) 1, 7, 36, 49 and 69** under **Mault et al. (2002/0027164 A1)** (hereinafter “**Mault-164**”) have been fully considered and are not persuasive. Mault-164 in paragraphs 57, 87 and 98 teach a shopping list is “generated automatically based on some or all of the following: usual purchase habits, dietary needs, previous purchase information, diet log information ... [t]he PDA may suggest complete, nutritionally balanced meals to the person”; message sent to client advising not to complete meal to remain on diet program; “Failure to reach weight goals may be used to modify food orders placed by the PDA”. Therefore, rejection has not been withdrawn.
4. Applicant further argues in respect to claim 73 that Mault-164 does not disclose displaying a meal plan for "one of the days displayed in the multi-day format." While

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Mault-164 is not specific to display meal options based on day or multi-day, Mault-069 also discussed in the previous rejection teaches displaying weight control day on either the basis of one day or a week.

Furthermore according to Applicant's own arguments "it is known that PDAs provide a calendar for scheduling personal appointments".(Arguments: page 17) Therefore, Examiner notes that if the PDA can be used to enter appointments it can also be used to enter appointments to both eat a meal and list what type of foods should be in that meal.

Therefore, rejection has not been withdrawn.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. **Claims 1-5, 7-16, 18-34, 38-42, 44-45, 48-50, 53-54, 57, 59-61, 63-64, 69-71, 74, 76-80** are rejected under 35 U.S.C. 102(e) as being anticipated by **Mault et al. (2002/0027164 A1)** (hereinafter "**Mault-164**").

7. **With respect to Claim 1: (Original)** Mault-164 teaches a system for facilitating the control of body weight of a person, said system comprising:

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- *A processor operable to execute software that maintains a meal plan for the person;* (See at least Mault-164: Fig. 3, item 31 and other supporting text).
- *A memory unit operable to store data associated with the meal plan;* (See at least Mault-164: Fig. 3, item 34 and other supporting text); and
- *An input/output device operable to provide an interface for the person to operate the software and receive an updated body weight from the person;* (See at least Mault-164: Fig. 2 and other supporting text)
- *A display operable to present the meal plan to the person, the meal plan being automatically altered by the processor based on the updated body weight.* (paragraphs; 57, 87 and 98 - a shopping list is “generated automatically based on some or all of the following: usual purchase habits, dietary needs, previous purchase information, diet log information ... [t]he PDA may suggest complete, nutritionally balanced meals to the person”. (paragraph 57); message sent to client advising not to complete meal to remain on diet program; “”Failure to reach weight goals may be used to modify food orders placed by the PDA”).

8. **With respect to Claim 2: (Original)** Mault-164 teaches:

- *A network coupled to the system;* (See at least Mault-164: Fig. 4, item 48 and other supporting text) and
- *Wherein the input/output unit is operable to communicate the data associated with the meal plan across the network.* (See at least Mault-164: Fig. 3 and Fig. 4, as well as other supporting text).

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9. **With respect to Claims 3 and 77: (Original)** Mault-164 teaches *the network is the Internet*. (See at least Mault-164: Paragraph 59).

10. **With respect to Claim 4: (Original)** Mault-164 teaches *the software being executed, by the processor is further operable to generate the meal plan based on characteristics associated with the person*. (See at least Mault-164: Paragraph 50).

11. **With respect to Claims 5 and 80: (Original)** Mault-164 teaches *the characteristics include demographics*. (See at least Mault-164: Paragraphs 6 and 50).

12. **With respect to Claim 7: (Original)** Mault-164 teaches a method for facilitating the control of body weight of a person, said method comprising:

- *Receiving an initial body weight of the person*; (See at least Mault-164: Paragraph 50).
- *Determining a target food consumption plan for the person based at least in part on the initial body weight*; (See at least Mault-164: Paragraph 57).
- *Receiving an updated weight of the person*; (See at least Mault-164: Paragraph 98 – inherent from paragraph that to determine weight failure weight value would have to be updated) and
- *Automatically altering the target food consumption plan for the person based at least in part on the updated weight of the person*. (paragraphs; 57, 87 and 98 - a shopping list is “generated automatically based on some or all of the following: usual purchase habits, dietary needs, previous purchase information, diet log information ... [t]he PDA may suggest complete, nutritionally balanced meals to the person”. (paragraph 57); message sent to

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client advising not to complete meal to remain on diet program; “Failure to reach weight goals may be used to modify food orders placed by the PDA”).

13. **With respect to Claim 8: (Original)** Mault-164 teaches determining a target food consumption plan includes:

- *Determining a range of values based at least in part on the initial body weight of the person;* (See at least Mault-164: Paragraph 57) and
- *Selecting food for the person to consume on a daily basis based on the range of values.* (See at least Mault-164: Paragraph 57).

14. **With respect to Claim 9: (Original)** Mault-164 teaches *selecting a meal plan from a predetermined set of foods.* (See at least Mault-164: Paragraph 57).

15. **With respect to Claim 10: (Original)** Mault-164 teaches *the predetermined set of foods is composed of a pre-established set of foods and a user supplied set of foods.* (See at least Mault-164: Paragraphs 56, 57, 59 and 60).

16. **With respect to Claim 11: (Original)** Mault-164 teaches *the pre-established set of foods include foods prepared by consumer restaurants.* (See at least Mault-164: Paragraph 66).

17. **With respect to Claim 12: (Original)** Mault-164 teaches *the pre-established set of foods include branded foods.* (See at least Mault-164: Paragraph 67).

18. **With respect to Claim 13: (Original)** Mault-164 teaches *at least some of the predetermined set of foods are meals.* (See at least Mault-164: Paragraph 57).

19. **With respect to Claim 14: (Original)** Mault-164 teaches *communicating a message to the user based on the updated weight of the person.* (See at least Mault-164:

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Paragraph 98 – inherent from paragraph that to determine weight failure weight value would have to be updated).

20. **With respect to Claim 15: (Original)** Mault-164 *teaches the message provides at least one of the following: congratulations, encouragement, suggestions, warnings, and feedback information.* (See at least Mault-164: Paragraph 47).

21. **With respect to Claim 16: (Currently Amended)** Mault-164 teaches:

- *Providing a user selectable indicium operable to be utilized by the person in times of weight control difficulty;* (See at least Mault-164: Paragraphs 74 and 75)
- *Receiving a notification upon the user selectable indicium being selected by the person;* (See at least Mault-164: Paragraphs 74 and 75) and
- *Providing the person at least one selectable element associated the underlying information.* (See at least Mault-164: Paragraph 75 – customized feedback provided to user).

22. **With respect to Claims 18 and 78: (Original)** Mault-164 teaches *at least one selectable element is a hyperlink.* (See at least Mault-164: Paragraphs 62 and 74).

23. **With respect to Claim 19: (Original)** Mault-164 teaches *receiving at least one of height and age of the person.* (See at least Mault-164: Paragraph 50).

24. **With respect to Claims 20 and 40: (Original)** Mault-164 teaches *receiving demographical information associated with the person.* (See at least Mault-164: Paragraphs 6 and 50).

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25. **With respect to Claims 21 and 41: (Original)** Mault-164 teaches *altering the target food consumption plan of the person based on the demographical information associated with the person.* (See at least Mault-164: Paragraphs 60-61).

26. **With respect to Claim 22: (Original)** Mault-164 teaches *the demographical information includes at least one of the following: gender, race, and ethnicity.* (See at least Mault-164: Paragraph 50).

27. **With respect to Claim 23: (Original)** Mault-164 teaches *determining of the target food consumption plan is further based at least in part on the demographical information associated with person.* (See at least Mault-164: Paragraphs 6, 50, and 61).

28. **With respect to Claim 24: (Original)** Mault-164 teaches *determining of the target food consumption plan is based on decreasing weight of the person.* (See at least Mault-164: Paragraphs 2, 26, 50 and 57 – diet management can include decreasing weight).

29. **With respect to Claim 25: (Original)** Mault-164 teaches *determining of the target food consumption plan is based on maintaining weight of the person.* (See at least Mault-164: Paragraphs 2, 26, 50 and 57 – diet management can include maintaining weight).

30. **With respect to Claim 26: (Original)** Mault-164 teaches *determining of the target food consumption plan is based on increasing weight of the person.* (See at least Mault-164: Paragraphs 2, 26, 50 and 57 – diet management can include increasing weight).

31. **With respect to Claim 27: (Currently Amended)** Mault-164 teaches:

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- *providing indiciu of selectable activities for the person to engage;* (See at least Mault-164: Paragraphs 74 and 75) and
- *receiving a selection of at least one selectable activity from the user.* (See at least Mault-164: Paragraphs 74 and 75).

32. **With respect to Claims 28 and 44: (Original)** Mault-164 teaches *utilizing the selection to alter the amount of consumable food to satisfy the target consumption plan.* (See at least Mault-164: Paragraphs 47 and 57).

33. **With respect to Claim 29: (Original)** Mault-164 teaches *altering the target food consumption plan of the person based on the selection.* (See at least Mault-164: Paragraphs 47 and 57).

34. **With respect to Claim 30: (Original)** Mault-164 teaches *automatically altering the target food consumption plan is performed by a computing device.* (See at least Mault-164: Paragraphs 47 and 57).

35. **With respect to Claim 31: (Original)** Mault-164 teaches *computing device is a hand-held computing device.* (See at least Mault-164: Figs. 1 and 2, as well as accompanying text; Paragraph 39).

36. **With respect to Claim 32: (Original)** Mault-164 teaches *comprising communicating the altered food consumption plan across a network.* (See at least Mault-164: Paragraph 57; Fig. 3, items 37 and 38 and Fig. 4, item 48, as well as accompanying text).

37. **With respect to Claim 33: (Original)** Mault-164 teaches *comprising receiving at least one other characteristic of the person.* (See at least Mault-164: Paragraph 50).

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38. **With respect to Claim 34: (Original)** Mault-164 teaches *determining of the target food consumption plan for the person is additionally based on the at least one other characteristic*. (See at least Mault-164: Paragraphs 50 and 57).

39. **With respect to Claim 36: (Original)** Mault-164 teaches a system for facilitating the control of body weight of a person, said method comprising:

- *Means for receiving an initial body weight of the person*; (See at least Mault-164: Paragraph 57; Figs. 1 and 2, as well as accompanying text).
- *Means for determining target food consumption plan for the person based at least in part on the initial body weight*; (See at least Mault-164: Paragraphs 2, 26, 50 and 57 – diet management can include increasing weight).
- *Means for receiving an updated weight of the person*; (See at least Mault-164: Paragraph 98 – inherent from paragraph that to determine weight failure weight value would have to be updated) and
- *Means for automatically altering the target food consumption plan for the person based at least in part on the updated weight of the person*. (paragraphs; 57, 87 and 98 - a shopping list is “generated automatically based on some or all of the following: usual purchase habits, dietary needs, previous purchase information, diet log information ... [t]he PDA may suggest complete, nutritionally balanced meals to the person”. (paragraph 57); message sent to client advising not to complete meal to remain on diet program; “”Failure to reach weight goals may be used to modify food orders placed by the PDA”).

40. **With respect to Claim 38: (Original)** Mault-164 teaches *means for communicating a message to the user based on the updated weight of the person*. (See at

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least Mault-164: Paragraph 98 – inherent from paragraph that to determine weight failure weight value would have to be updated).

41. **With respect to Claim 39: (Original)** Mault-164 teaches:

- *Means for providing a user selectable indicia operable to be utilized by the person in times of weight control difficulty; (See at least Mault-164: Paragraphs 74 and 75).*
- *Means for receiving a notification upon the user selectable indicia being selected by the person; (See at least Mault-164: Paragraphs 74 and 75) and*
- *Means for providing the person at least one selectable element associated with underlying information, suggestions, and commentary. (See at least Mault-164: Paragraph 75 – customized feedback provided to user).*

42. **With respect to Claim 42: (Original)** Mault-164 teaches *target food consumption plan is further based at least in part on the demographical information associated with person.* (See at least Mault-164: Paragraphs 50 and 57).

43. **With respect to Claim 45: (Original)** Mault-164 teaches *means for altering the target food consumption plan of the person based on the selection.* (See at least Mault-164: Paragraphs 47 and 57).

44. **With respect to Claim 48: (Original)** Mault-164 teaches a computer-readable medium having stored thereon sequences of instructions, the sequences of instructions including instructions, when executed by a processor, cause the processor to:

- *Receive an initial body weight of the person; (See at least Mault-164: Paragraph 50).*

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- *Determine a target food consumption plan for the person based at least in part on the initial body weight; (See at least Mault-164: Paragraph 57).*
- *Receive an updated weight of the person; (See at least Mault-164: Paragraph 98 – inherent from paragraph that to determine weight failure weight value would have to be updated) and*
- *Automatically alter the target food consumption plan for the person based at least in part on the updated weight of the person. (See at least Mault-164: Paragraph 98 – inherent from paragraph that to determine weight failure weight value would have to be updated).*

45. **With respect to Claim 49: (Currently Amended)** Mault-164 teaches a method for managing data utilized by an online personalized weight control program, said method comprising:

- *Receiving identification of a user; (See at least Mault-164: Paragraph 50).*
- *Receiving an initial profile representative of characteristics of a user including a weight of the user (See at least Mault-164: Paragraph 50).*
- *Forming a dataset based on the initial profile associated with the user; the dataset including a meal plan based in part on the weight of the user; (See at least Mault-164: Paragraph 50; Fig. 3, item 36 as well as supporting text; paragraph 98).*
- *Providing a plurality of interoperable selectable weight control elements for access by the user to personalize the dataset; (See at least Mault-164: Paragraphs 50, 55, 56 and 58).*

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- *Receiving data associated with the weight control elements; including an updated weight of the user* (See at least Mault-164: Paragraphs 50 and 98).
- *Updating the dataset in accordance with the received data such that the meal plan is altered based in part on the updated weight of the user*; (paragraphs; 57, 87 and 98 - a shopping list is “generated automatically based on some or all of the following: usual purchase habits, dietary needs, previous purchase information, diet log information ... [t]he PDA may suggest complete, nutritionally balanced meals to the person”. (paragraph 57); message sent to client advising not to complete meal to remain on diet program; “”Failure to reach weight goals may be used to modify food orders placed by the PDA”) and
- *Storing the updated dataset, the updated dataset being utilized by the user to follow a personalized weight control program.* (See at least Mault-164: Paragraph 51).

46. **With respect to Claims 50: (Original)** Mault-164 teaches *the interoperable selectable weight control elements include at least one of food and exercise items.* (See at least Mault-164: Paragraphs 57 and 74).

47. **With respect to Claim 53: (Original)** Mault-164 teaches *updating is performed automatically.* (See at least Mault-164: Paragraph 98 – inherent from paragraph that to determine weight failure weight value would have to be updated).

48. **With respect to Claims 54: (Original)** Mault-164 teaches *the interoperable selectable weight control elements include a journal interface operable to provide a daily*

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listing of foods for consumption in accordance with the personalized weight control program. (See at least Mault-164: Paragraph 86).

49. **With respect to Claim 57: (Original)** Mault-164 teaches *the target value is a maximum number of values as a function of food consumption and activities allotted by the weight control program.* (See at least Mault-164: Paragraphs 57 and 74).

50. **With respect to Claim 59: (Original)** Mault-164 teaches *updating of the dataset is performed by a computing device in communication with a network.* (See at least Mault-164: Fig. 3, items 37 and 38 and Fig. 4, item 48, as well as accompanying text).

51. **With respect to Claims 60 – 68: (Cancelled)**

52. **With respect to Claim 69: (Original)** Mault-164 teaches a system for facilitating control of body weight of a person, said system comprising:

- *A computing device operable to execute a software program having a plurality of software elements operable to facilitate control of body weight of the person, the software elements operable to facilitate control of body weight of the person utilizing at least two sources of input,* (See at least Mault-164: Figs. 1 and 2, as well as accompanying text; Paragraph 39).
- *A first input source being a planned set of food items to be consumed based on a current weight of the person and a second input source being an actual set of food items consumed by the person,* (See at least Mault-164: Paragraphs 47, 55 and 57).
- *The software elements further operable to receive updated weight of the person to alter the planned set of food items for future food item consumption.* (paragraphs; 57, 87 and 98 - a shopping list is “generated automatically based

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on some or all of the following: usual purchase habits, dietary needs, previous purchase information, diet log information ... [t]he PDA may suggest complete, nutritionally balanced meals to the person”. (paragraph 57); message sent to client advising not to complete meal to remain on diet program; ““Failure to reach weight goals may be used to modify food orders placed by the PDA”).

53. **With respect to Claim 70: (Original)** Mault-164 teaches *the software elements are further operable to facilitate control of body weight of the person utilizing a third source of input being actual activities performed by the person.* (See at least Mault-164: Paragraphs 57, 74 and 75).

54. **With respect to Claim 71: (Original)** Mault-164 teaches *one software element is a journal operable to maintain information associated with the input sources.* (See at least Mault-164: Paragraph 86).

55. **With respect to Claim 74: (Original)** Mault-164 teaches *the input/output device is further operable to receive an updated body weight from the person, and wherein the meal plan is automatically altered by the processor based on the updated body weight.* (See at least Mault-164: Paragraph 98 – inherent from paragraph that to determine weight failure weight value would have to be updated; “failure to reach weight goals may be used to modify food orders placed by PDA).

56. **With respect to Claim 76: (Original)** Mault-164 teaches *a network coupled to the system, and wherein the input/output unit is operable to communicate the data associated with the meal plan across the network.* (See at least Mault-164: Fig. 3, items 37 and 38 and Fig. 4, item 48, as well as other supporting text).

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57. **With respect to Claim 79: (Original)** Mault-164 teaches *the software being executed by the-processor is further-operable to generate the meal plan based on characteristics associated with the person.* (See at least Mault-164: Paragraph 57).

Claim Rejections - 35 USC § 103

58. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

59. **Claims 6, 35, 37, 43, 46-47, 52, 55-56, 58, 72, 73 and 75** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Mault-164** in view of **Mault (2002/0062069 A1)** (hereinafter “**Mault-069**”).

60. **With respect to Claims 6, 35, 47 and 75: (Original)** Mault-164 discloses the limitations as shown in the rejections above. Mault-164 does not teach *the display periodically or from time to time presents to the person a reminder to enter the updated body weight.*

However, Mault-069 discloses *the display periodically or from time to time presents to the person a reminder to enter the updated body weight.* (See at least Mault-069: Paragraph 20 – to re-determine their RMR level a client would have to update their body weight information).

It would have been obvious to one of ordinary skill in the art at the time of the invention to remind the client to update body weight information because of the

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motivation to “revise the parameters of the program in a manner consistent with a successful outcome.” (See Mault-069: Paragraph 20).

61. **With respect to Claim 37: (Original)** Mault-164 discloses the limitations as shown in the rejections above. Mault-164 does not teach *means for selecting a meal plan from a predetermined set of foods*.

However, Mault-069 teaches *means for selecting a meal plan from a predetermined set of foods*. (See at least Mault-069: Paragraph 99).

It would have been obvious to one of ordinary skill in the art at the time of the invention to select a meal plan from predetermined food because of the motivation of having “information such as nutritional value of the selected meal, [including] caloric, fat and vitamin analysis.” (See Mault-069: Paragraph 99).

62. **With respect to Claim 43: (Original)** Mault-164 discloses *means for receiving a selection of at least one selectable activity from the user*. (See at least Mault-164: Fig. 4, item 45 as well as supporting text; paragraphs 74 and 75). Mault-164 does not:

- *Means for providing indicia of selectable activities for the person to engage;*

However, Mault-069 teaches:

- *Means for providing indicia of selectable activities for the person to engage;*

(See at least Mault-069: Paragraph 59).

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide allow person to select activities they want to engage in via a weight control device because of the motivation to relate “activities to caloric expenditure.” (See Mault-069: Paragraph 59).

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63. **With respect to Claim 46: (Original)** Mault-164 discloses the limitations as shown in the rejections above. Mault-164 does not teach *means for receiving at least one other characteristic of the person, said means for determining the target food consumption plan further basing the target food consumption plan on the at least one other characteristic.*

Mault-069 however, discloses *means for receiving at least one other characteristic of the person, said means for determining the target food consumption plan further basing the target food consumption plan on the at least one other characteristic.* (See at least Mault-069: Paragraphs 53 and 55).

It would have been obvious to one of ordinary skill in the art at the time of the invention to receive information on the person determine target food consumption plan because of the motivation to allow “the user to view a breakdown of their daily caloric intake.” See Mault-069: Paragraph 55).

64. **With respect to Claim 52: (Original)** Mault-164 discloses the limitations as shown in the rejections above. Mault-164 does not teach *the dataset includes predetermined meals each having a total food value associated therewith.*

Mault-069 however, discloses *the dataset includes predetermined meals each having a total food value associated therewith.* (See at least Mault-069: Paragraph 99).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have a predetermined meal with total food value because of the motivation of having “information such as nutritional value of the selected meal, [including] caloric, fat and vitamin analysis.” (See Mault-069: Paragraph 99).

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65. **With respect to Claim 55: (Currently Amended)** Mault-164 discloses the limitations as shown in the rejections above. Mault-164 does not teach *the foods are alterable to establish a different daily listing of foods for consumption*.

Mault-069 however, discloses *the foods are alterable to establish a different daily listing of foods for consumption*. (See at least Mault-069: Paragraphs 54 and 55).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have different daily food listings because of the motivation to a varied selection of foods to “assist the user in achieving a weight loss goal.” (See Mault-069: Paragraph 54).

66. **With respect to Claim 56: (Original)** Mault-164 discloses the limitations as shown in the rejections above. Mault-164 does not teach *crediting future daily listings based on a total food value of the daily listing being below a target value*.

Mault-069 however, discloses *crediting future daily listings based on a total food value of the daily listing being below a target value*. (See at least Mault-069: Paragraphs 54 and 60; Figs. 6 and 11B as well as supporting text).

It would have been obvious to one of ordinary skill in the art at the time of the invention to credit future daily listings because a daily value may be below target value because of the motivation to revise goals. (See Mault-069: Figure 6).

67. **With respect to Claim 58: (Original)** Mault-164 discloses the limitations as shown in the rejections above. Mault-164 does not teach *crediting is performed for a predetermined number of days*.

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Mault-069 however, discloses *crediting is performed for a predetermined number of days*. (See at least Mault-069: Figs. 6 and 11B as well as supporting text; Paragraphs 54, 55, 60 and 62).

It would have been obvious to one of ordinary skill in the art at the time of the invention to give credit for a predetermined number of days because of the motivation to compare progress made towards target goals with initial projections. (See Mault-069: Paragraph 55).

68. **With respect to Claim 72: (Original)** Mault-164 discloses the limitations as shown in the rejections above. Mault-164 does not teach *the software elements are operable to compute a food consumption value to be consumed based on food values associated with the actual food items consumed by the person*.

Mault-069 however, discloses *the software elements are operable to compute a food consumption value to be consumed based on food values associated with the actual food items consumed by the person*. (See at least Mault-069: Figs. 9, 10, 11A 11B as well as supporting text; Paragraphs 53 and 55).

It would have been obvious to one of ordinary skill in the art at the time of the invention to be able to compute food values based on the actual food consumed because of the motivation to provide advice on future diet planning. (See Mault-069: Paragraph 54)

69. **With respect to Claim 73: (Currently Amended)** Mault-164 teaches:

- *A processor operable to execute software that maintains a meal plan for the person*; (See at least Mault-164: Paragraph 57).

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- *A memory unit operable to store data associated with the meal plan; (See at least Mault-164: Fig. 3, item 34 and other supporting text).*
- *An input/output device operable to provide an interface for the person to operate the software; (See at least Mault-164: Figs. 1 and 2, as well as accompanying text; Paragraph 39)*

Mault-164 does not teach . However, Mault-069 teaches

- *A display operable to present the meal plan to the person, the meal plan being displayed in a multi-day format and including a user selectable indicium operable to be utilized by the person in order to display the meal plan for a particular one of the days displayed in the multi-day format. (See at least Mault-069: Figs. 11A, 11B and Fig. 20 – diet information can be displayed for the day or the week).*

One of ordinary skill in the art would understand that Mault-164 relates to a weight management system. This system provides monitoring of consumption allowing a client to enter information into a diet log and personal information into the system regarding their weight, age, gender and other factors. Clients are provided a shopping list which is "generated automatically based on some or all of the following: usual purchase habits, dietary needs, previous purchase information, diet log information...[t]he PDA may suggest complete, nutritionally balanced meals to the person". (paragraph 57). Mault-069 provides diet information in the form of caloric intake and meal information. This information can be displayed on the basis of a day or week.

Furthermore according to Applicant's own arguments "it is known that PDAs provide a calendar for scheduling personal appointments".(Arguments: page 17)

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Therefore, Examiner notes that if the PDA can be used to enter appointments it can also be used to enter appointments to both eat a meal and list what type of foods should be in that meal.

70. **Claim 17** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Mault-164** in view of **Jill Barker, “There’s a gym on the Job: St. Mary’s Hospital Offers Full-Service Facility for the Use of its Harried Staff”**, The Gazette, March 28, 2000 (hereinafter “**Barker**”).

71. **With respect to Claim 17: (Currently Amended)** Mault-164 discloses the limitations as shown in the rejections above. Mault-164 does not teach *the user selectable indicium is a Panic button*.

Mault-069 however, discloses *the user selectable indicium is a Panic button*. (Barker: Page 1, full text, paragraph 4).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have a panic button as part of a weight control device because of the motivation to help “anyone who is injured or feels sick while exercising.” (Barker: Page 1, full text, paragraph 4).

72. **Claims 51** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Mault-164** in view of **Applicants Own Admission**.

73. **With respect to Claim 51 and 62:** Mault-164 discloses the limitations as shown in the rejections above. Mault-164 does not teach *forming of the dataset is a function of a predetermined set of rules operable to control weight*.

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Mault-069 however, discloses *forming of the dataset is a function of a predetermined set of rules operable to control weight*. (Background: Page 2, paragraph 5).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have a predetermined set of rules to help control weight because of the motivation to “define the specific foods, times to eat and exercises to be performed.” (Background: Page 2, paragraph 5).

CONCLUSION

74. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Heidi Riviere whose telephone number is 571-270-1831. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm EST.; Alternative Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Name: /H. R./
Examiner, Art Unit 3629

Title: Examiner

Signature:

Date:

/John G. Weiss/

Supervisory Patent Examiner, Art Unit 3629